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Americas, as Trustee for Dover Mortgage
Capital Corporation Grantor Trust Certificate
Series 2004-A*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DEUTSCHE BANK TRUST COMPANY
AMERICAS, AS TRUSTEE FOR DOVER
MORTGAGE CAPITAL CORPORATION
GRANTOR TRUST CERTIFICATE SERIES
2004-A,

Plaintiff,

vs.

LOS PRADOS COMMUNITY ASSOCIATION,
INC.; SATICOY BAY LLC SERIES 5105
KINGSBRIDGE DRIVE; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

SATICOY BAY LLC SERIES 5105
KINGSBRIDGE DRIVE,

Counterclaimant,

vs.

DEUTSCHE BANK TRUST COMPANY
AMERICAS, AS TRUSTEE FOR DOVER
MORTGAGE CAPITAL CORPORATION
GRANTOR TRUST CERTIFICATE SERIES
2004-A.,

Counter-defendant.

Case No.: 2:16-cv-580-RFB-PAL

**STIPULATION AND ORDER TO STAY
LITIGATION PENDING FINAL
RESOLUTION OF PETITION(S) FOR
WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT**

1 Plaintiff and counter-defendant Deutsche Bank Trust Company Americas, as Trustee for Dover
2 Mortgage Capital Corporation Grantor Trust Certificate Series 2004-A (**Deutsche Bank**), defendant
3 Los Prados Community Association, Inc., defendant and counter-claimant Saticoy Bay LLC Series
4 5105 Kingsbridge Drive (**Saticoy Bay**), and defendant Nevada Association Services, Inc. stipulate as
5 follows:

6 1. This action involves the parties seeking quiet title/declaratory relief and other claims
7 related to a non-judicial homeowner's association foreclosure sale conducted pursuant to NRS chapter
8 116.

9 2. On August 12, 2016, the Ninth Circuit held, in *Bourne Valley*, Nevada's "opt-in" notice
10 scheme for homeowners' association super-priority foreclosure is facially unconstitutional under the
11 Fourteenth Amendment's due process clause. *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*,
12 832 F.3d at 1159-60.

13 3. This Court issued an order staying this case pending the Ninth Circuit's mandate on
14 August 30, 2016, to "avoid potentially unnecessary further litigation." ECF No. 23 at 1. The order
15 directs any party may move to lift the stay when the Ninth Circuit issues its mandate. *Id.* at 3.

16 4. The Ninth Circuit issued its mandate on December 14, 2016. *Bourne Valley*, Ninth
17 Circuit Case No. 15-15233.

18 5. On January 26, 2017, the Nevada Supreme Court issued its decision in *Saticoy Bay*
19 *LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of Wells Fargo Bank, N.A.*, 133
20 Nev. Adv. Op. 5, ___ P.3d ___, 2017 WL 398426 (Nev. Jan. 26, 2017) holding, in direct contradiction
21 to *Bourne Valley*, no state action supported a challenge under the due process clause.

22 6. Bourne Valley intends to file a petition for writ of certiorari in *Bourne Valley*. Its
23 current deadline is April 3, 2017. *See Bourne Valley*, U.S. Supreme Court Docket No. 16A753.
24 Wells Fargo's deadline to file its petition for writ of certiorari in *Saticoy Bay* is April 25, 2017. Thus,
25 the parties believe the stay the parties request is appropriate.

26 7. On February 8, 2017, the Nevada Supreme Court stayed the issuance of remittitur in
27 *Saticoy Bay* pending the filing of a writ of certiorari with the United States Supreme Court and, if a
28

petition is filed, the stay of remittitur will stay in effect until final disposition of the certiorari proceedings before the United States Supreme Court.

8. Since then, several judges in this district have stayed similar cases pending the exhaustion of all appeals before the United States Supreme Court. *See e.g., Nationstar Mortg. LLC v. Green Valley S. Owners Ass'n*, No. 2:16-cv-00883-GMN-GWF, ECF No. 38 (D. Nev. Oct. 5, 2016); *Bank of America, N.A. v. Canyon Willow Trop Owners' Ass'n*, No. 2:16-cv-01327-GMN-VCF, ECF No. 25 (D. Nev. Oct. 26, 2016); *Deutsche Bank Nat'l Tr. Co. v. Copper Sands HOA*, No. 2:16-cv-00763-JAD-CWH, ECF No. 29 (D. Nev. Feb. 28, 2017).

9. To determine if a stay is appropriate, the Court must consider (1) the possible damage which may result from the stay, (2) any hardship or inequity which may result from the stay, and (3) the orderly course of justice measured in terms of simplifying or complicating the issues, proof, and questions of law. *Dependable Hwy. Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). Here, the factors support a stay of litigation:

a. Damage from Stay: Any damage from a temporary stay in this case will be minimal if balanced against the potential fees, costs, and time which would surely ensue in this matter if litigation were allowed to continue that could be mooted by a decision in *Bourne Valley* certiorari proceedings. Indeed, the parties will be able to avoid the cost and expense of continued legal proceedings in light of what is unsettled law to say the least. Moreover, the Court will be relieved of expending further time and effort until the conflict between the circuit and Nevada Supreme Court is resolved. Thus, a stay will benefit all parties involved herein.

b. Hardship or Inequity: There will be no significant hardship or inequity that befalls one party more than the other. This relatively equal balance of equities results from the need for all parties to have finality, given the split in the state and federal court decisions. The parties agree that any hardship or inequity falling on any of them is outweighed by the benefits of a stay.

c. Orderly Course of Justice: At the center of this case is a homeowners' association's foreclosure sale under NRS 116. The outcome of the petitions for writ in *Bourne Valley* and/or *Saticoy Bay* have the potential to affirm or overturn either case. Without a stay, the parties will

1 expend resources that will be unnecessary if either or both petitions are granted. A stay would also
 2 avoid a likely appeal from any subsequent judgment in this case. A temporary stay would
 3 substantially promote the orderly course of justice in this case. A stay will avoid the moving forward
 4 without final resolution of the federal issues and the state court/federal court conflict.

5 10. The parties agree that all proceedings in the instant case, including motion and other
 6 litigation deadlines, are stayed pending final resolution of the *Bourne Valley* and/or *Saticoy Bay*
 7 certiorari proceedings before the United States Supreme Court.

8 11. If this stipulation is approved, Deutsche Bank's motion to partially lift stay, ECF No.
 9 24, shall be deemed withdrawn.

10 12. Saticoy Bay shall be required to keep current on all property taxes and assessments,
 11 HOA dues, maintain the property, and maintain insurance on the property at issue.

12 13. Deutsche Bank shall be prohibited from selling or encumbering the property unless
 13 otherwise ordered by the Court.

14 14. Deutsche Bank is prohibited from conducting foreclosure proceedings on the property
 15 unless otherwise ordered by the Court.

16 15. The parties agree that all proceedings in the instant case, including motion and other
 17 litigation deadlines, are stayed pending final resolution of the *Bourne Valley* and/or *Saticoy Bay*
 18 certiorari proceedings before the United States Supreme Court.

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16. Any party may file a written motion to lift stay at any time it deems appropriate.

Dated this 21st day of March, 2017.

Dated this 13th day of March, 2017.

AKERMAN LLP

**LAW OFFICES OF MICHAEL F. BOHN,
ESQ., LTD.**

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*Attorneys for defendant and counter-claimant
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**E-signature affixed by Akerman LLP; approved by
counsel via email*

Dated this 21st day of March, 2017.

Dated this 21st day of March, 2017.

**ALVERSON, TAYLOR, MORTENSEN &
SANDERS**

/s/ David J. Rothenberg, Esq.*
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**E-signature affixed by Akerman LLP; approved by
counsel via email*

**E-signature affixed by Akerman LLP; approved by
counsel via email*

IT IS SO ORDERED:



RICHARD F. BOULWARE, II
United States District Judge
DATED this 23rd day of March, 2017.

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CERTIFICATE OF SERVICE

I certify on the 21st day of March, 2017, and pursuant to Federal Rule of Civil Procedure 5, I filed and served a true and correct copy of the foregoing **STIPULATION AND ORDER TO STAY LITIGATION PENDING FINAL RESOLUTION OF PETITION(S) FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT** via the Court's CM/ECF system on the following:

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/s/ Nick Mangels

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